

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.04.2021
CORAM
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
H.C.P.No.1803 of 2020

Rahmath Be,
W/o.Mohamed Rauf

...Petitioner/Mother of the detenu

versus

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
 - 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai - 600 007.
 - 3.The Superintendent of Prison,
Central Prison - II, Puzhal,
Chennai - 600 066.
 - 4.The Inspector of Police,
D3-Ice House Police Station,
Chennai.
- ...Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in No.306/BCDFGISSSV/2020 dated 18.08.2020 and quash the same and direct the respondents to produce the body and person of petitioner's son Chan Basha, son of Mohamed Rope, aged about 31 years, detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.B.M.Santharam

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.PONGIAPPAN, J.]

The petitioner is the mother of the detenu, Chan

Basha, son of Mohamed Rope, aged about 31 years. The detenu has been detained by the second respondent by its order dated 18.08.2020 in No.306/BCDFGISSSV/2020, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 18.08.2020. The petitioner made a representation on 18.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.10.2020. The remarks were duly received on 09.10.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.10.2020.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence, there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 09.10.2020 and there was a delay of 19 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 6 days were Government Holidays, hence, there was inordinate delay of 13 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In *Sumaiya vs. The Secretary to Government* (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 13 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.306/BCDFGISSSV/2020 dated 18.08.2020, passed by the second respondent is set aside. The detenu, viz. Chan Basha, son of Mohamed Rope, aged about 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

सत्यमेव जयते
//True Copy//

Sub Assistant Registrar

sri
To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai - 600 007.

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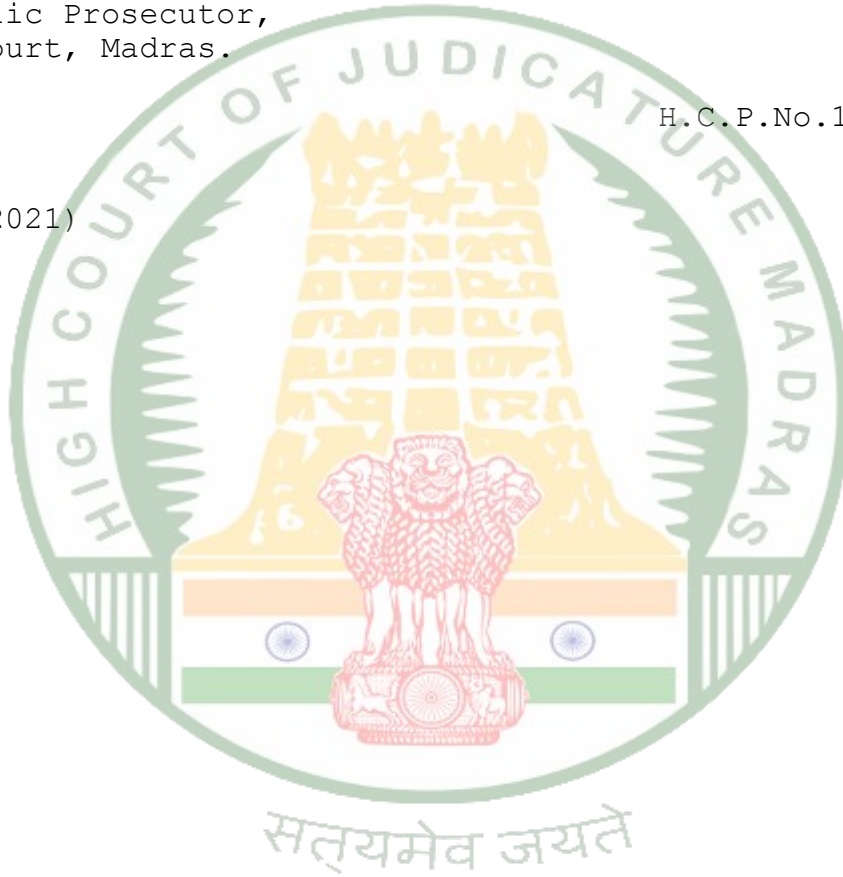
4.The Inspector of Police,
D3-Ice House Police Station,
Chennai.

5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1803 of 2020

JPII(CO)
NS(11/05/2021)



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